

IN THE MATTER OF BRENDAN JOHN SALSBURY, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. I. R. Woolfe (in the chair)
Mrs J. Martineau
Mr. S. Marquez

Date of Hearing: 18th December 2007

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of The Law Society by Stephen John Battersby solicitor and partner in the firm of Jameson & Hill of 72-74 Fore Street, Hertford, Hertfordshire SG14 1BY on the 8th June 2007 that Brendan John Salsbury of Holden and Co Solicitors, 3 Bank Street, Ashford, Kent TN23 1BX might be required to answer the allegations contained in the statement which accompanied the application and that such order might be made as the Tribunal should think right.

The allegation was that the Respondent had been guilty of conduct unbecoming a solicitor in that on the 14th July 2006 at Croydon Crown Court he was convicted of an offence involving dishonesty, namely obtaining a money transfer by deception contrary to Section 15A of the Theft Act 1968 for which he was sentenced to a conditional discharge for 12 months and ordered to pay £300.00 costs.

The application was heard at The Court Room, Third Floor, Gate House, 1 Farringdon Street, London EC4M 7NS when Stephen John Battersby appeared as the Applicant and the Respondent was represented by Mr. D Roach of Counsel.

The evidence before the Tribunal included the admissions of the Respondent.

At the conclusion of the hearing the Tribunal made the following order:-

The Tribunal Orders that the Respondent, Brendan John Salsbury of 3 Bank Street, Ashford, Kent, TN23 1BX, solicitor, be Struck Off the Roll of Solicitors and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £1,475.00.

The facts are set out in paragraphs 1 to 3 hereunder:-

1. The Respondent, born in 1958, was admitted as a solicitor in 1984. At the material time he was a partner in the firm of Funnell & Perring Solicitors of Hastings, East Sussex.
2. The Respondent was convicted of obtaining a money transfer by deception after a lengthy trial at the conclusion of which he was acquitted of 24 other offences. The Respondent altered a cheque which had originally been drawn in his favour in the sum of £862.50 to read £1,862.50.
3. The Law Society wrote to the Respondent on 1st December 2006 inviting him to explain his conduct. In his reply of 15th December 2006 the Respondent explained that the offence had occurred as a result of work which he was carrying out as secretary to the trustees of a school body. He did not consider that he had acted dishonestly but he understood that he was bound to accept the verdict of the jury in relation to the count on which he had been convicted. He considered that he had been entitled to the sum of £1,862.50.

The Submissions of the Applicant

4. Whilst it was accepted that the Respondent had not committed the offence for which he was convicted in the course of practising as a solicitor and the Respondent was to be given credit for his immediate report of the conviction to The Law Society, the Tribunal was invited to give due weight to the sentencing comments of his Honour Judge Timothy Stow QC who, although he acknowledged that the Respondent considered that he was entitled to the extra £1,000 which he added to the face of the cheque, stated "nevertheless it is plainly an offence which no solicitor should even contemplate, let alone commit."

The Submissions of the Respondent

5. The Respondent had been clerk to the trustees of a school. The Tribunal was invited to consider in full the sentencing remarks of his Honour Judge Timothy Stow QC which gave a clear indication as to the seriousness to be attached to the offence. He pointed out that the Respondent had added the £1,000 to the cheque in circumstances where, although he considered he was entitled to it, he did not want to approach the Trustees to ask for a further £1,000 or to ask them to countersign or initial any alterations to the cheque because he would then have had the chore of explaining to them how the amount suddenly jumped from £862.50 to £1,862.50.

6. The learned Judge pointed out that the trial had lasted for about a fortnight with an indictment containing 25 counts where the Respondent had been convicted only on one of them. The Judge was of the view that he could take an exceptional course and imposed the sentence of a conditional discharge for 12 months. The level of dishonesty on the part of the Respondent had been negligible as he was entitled to the amount appearing on the face of the cheque after he amended it. He had done no more than gain the payment due to him a matter of a few days earlier than he would have done had he asked the trustees for a further sum.
7. The Respondent had been a former pupil of the school and had been asked to become clerk to the trustees of the school charity for a modest stipend. He was not engaged in that capacity as a solicitor or through his solicitors firm.
8. The trustees had obtained a government grant in order to improve the school's facilities. The job of the clerk to the trustees became very much more onerous than it had been hitherto. It had been agreed that the Respondent be paid for extra work undertaken over and above his modest stipend. Difficulties had been created when a trust of modest size had received large amounts of money.
9. It had been the practice of the Respondent to ask the trustees for cheques on account of costs. He submitted an annual account which acknowledged the sums that he had been paid during the year. It had been a somewhat casual arrangement. When the Respondent asked for a cheque the Trustees gave it to him. At a time when he had been given a cheque for £862.50 when he was entitled to an additional £1,000 he had foolishly altered the cheque.
10. There had been a general allegation that the Respondent had been overpaid by the trustees. That had not been the case but the Respondent had been advised to pay money back to the trustees which he had done. As a result the chairman of the trustees had decided not to commence civil proceedings against the Respondent.
11. The Respondent's action had been irregular and sloppy but he had not dishonestly sought to get money to which he was not entitled.
12. The Tribunal was invited to take the view that the scope of the dishonesty on the part of the Respondent was at such a low level that the Tribunal could in the particular and unusual circumstances of this case take an exceptional view.
13. The Respondent's personal mitigation was secondary. The results of what had occurred had been disastrous for the Respondent both in connection with his practice as a solicitor and in his personal life.
14. A solicitor's goodwill was his greatest asset. The Respondent had been well known in Hastings and as a result of what happened had found himself too embarrassed to go out in the town. He had lost his partnership at the firm where he had spent the whole of his professional life. He had lost his goodwill in that firm, and friendships and relationships with clients. The Respondent had had to resign his appointment as Deputy Coroner for East Sussex. He had also resigned from all of the charitable bodies on which he served.

15. The events had been the final straw in the break up of the Respondent's marriage. His wife had upon divorce been awarded the matrimonial home. The Respondent had two teenaged children.
16. Since 2002 the Respondent had been preoccupied with the criminal charges. The matters had been hanging over his head for some five years.
17. The Respondent had suffered considerable loss of earnings and was now employed by a firm at its Ashford office at a salary which marked a considerable decrease in his income.
18. The Respondent and his present employer had attended before the Tribunal.
19. The Respondent had suffered from having too much on his plate. By his action he had not gained anything over and above that to which he was entitled. The payment would have been shown in the annual statement he produced for the trustees. In reality the Respondent had been guilty of an error of judgement at a time when he was simply taking on too much.
20. The Respondent had been able to gain employment with a fellow solicitor and practised at that firm subject to the severe restrictions which had been placed on his practising certificate.
21. The Respondent was a generous man who undertook a great deal of charitable work and it was his generosity that had led him to take on too much which led to his downfall. The Respondent's offence had been extremely unusual and the result of his stupidity and sloppiness. The Respondent had suffered a great deal.
22. It was not necessary to order that the Respondent's name be struck off the Roll. The Tribunal was invited to take the view that the seriousness of the Respondent's position could be marked by the imposition of a period of suspension together with a recommendation to The Law Society that the public and the solicitors' profession could be protected by the maintenance of strict conditions on the Respondent's practising certificate. This would take into account the fact that the Respondent recognised and deeply regretted his inappropriate action and his most unfortunate lapse but he had begun to work his passage back.
23. The Respondent accepted that he should bear responsibility for the Applicant's costs and had agreed the figure.

The Tribunal's Findings

24. The Tribunal found the allegation to have been substantiated, indeed it was not contested.
25. The Tribunal considered the matters placed before it with an element of sadness. The Respondent had been guilty of an act of great stupidity when he sought to increase a cheque payable to him by a figure of £1,000.00. The Tribunal accepted the Respondent's explanation that the amended figure was properly the sum due to him but he nevertheless had been convicted of a criminal offence involving dishonesty.

26. The Tribunal recognised that as a result of this act of stupidity the Respondent had already suffered a great deal.
27. The Respondent had very properly admitted the allegation, and the matter with which the Tribunal had to grapple was the question of the appropriate sanction to be imposed upon the Respondent. The Tribunal gave very careful consideration to all of the submissions made on behalf of the Respondent but it had to recognise that the fortunes of an individual did not carry as much weight as the need to protect the good reputation of the solicitors' profession. The profession's collective reputation for trustworthiness was its most valuable asset and the Tribunal concluded that the public's perception of the profession's absolute trustworthiness would be damaged if a solicitor convicted of a criminal offence involving dishonesty were not to be made subject to the ultimate sanction.
28. The Tribunal concluded that it was both appropriate and proportionate to order that the Respondent be struck off the Roll of Solicitors.
29. It was right, as the Respondent himself acknowledged, that he should pay the Applicant's costs and the Tribunal ordered the Respondent to pay the costs fixed in the sum which had been agreed of £1,475.00 inclusive.

Application for Stay

30. Following the pronouncement of the Tribunal's order an application was made on behalf of the Respondent that the filing of the order with The Law Society be stayed.
31. The Tribunal was of the view that it had made a Striking Off Order in view of the Respondent's conviction for a criminal offence involving dishonesty and where the Tribunal's order was founded upon the dishonesty of a Respondent it did not consider it appropriate, in view of its duty to protect the public and the good reputation of the solicitors' profession, to make an order delaying the coming into force of its Striking Off Order. The Tribunal refused the stay but pointed out that it remained open to the Respondent to make an application for a stay to the Divisional Court.

Dated this 13th day of February 2008

On behalf of the Tribunal

I R Woolfe
Chairman

CO/11565/2007

Neutral Citation Number: [2008] EWHC 889 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
DIVISIONAL COURT

Royal Courts of Justice
Strand
London WC2A 2LL

Tuesday, 18th March 2008

B e f o r e:

LORD JUSTICE DYSON

MR JUSTICE LLOYD JONES

Between:

BRENDAN JOHN SALSURY

Claimant

v

THE LAW SOCIETY

Defendant

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190 Fleet Street London EC4A 2AG
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(Official Shorthand Writers to the Court)

Mr D Broatch (instructed by Holden & Co) appeared on behalf of the **Claimant**
Mr G Marriott (instructed by Gorvins) appeared on behalf of the **Defendant**

J U D G M E N T
(Approved by the court)

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1. MR JUSTICE LLOYD JONES: This is an appeal by Brendan John Salsbury pursuant to section 49 of the Solicitors Act 1974 against the decision of the Solicitors Disciplinary Tribunal given on 18th December 2007 ordering that he be struck off the Roll of Solicitors.
2. Mr Salsbury was admitted as a solicitor in 1984. He trained at a firm in Hastings (Funnell & Perring), where he later worked for 20 years, becoming senior partner in 2000. Between 1999 and 2002 he acted as clerk to the trustees of his old school (William Parker School). The professional work in which he was engaged for the trustees was carried out in a personal capacity and not in his capacity as a partner in his firm. He received a modest annual stipend for his work as clerk to the trustees. However, during this period the school was undertaking extensive renovation works which entailed extra work for the clerk. It appears that the appellant agreed with the trustees that he would be paid separately for this additional work. It was the practice of the appellant to ask the trustees for cheques from time to time on account of his fees. They would write cheques on request. At the end of the year the appellant would submit an account showing what he had been paid. It appears that the trust was not well run. It was later investigated by the Charity Commission and criticised, and a number of the trustees resigned.
3. On 15th November 2000 the appellant altered a cheque payable to him in the sum of £862.50 so that the amount payable was increased by £1,000 to £1,862.50. The explanation provided by the appellant was that he honestly believed that he was entitled to the extra money for additional work he had done since requesting the cheque, but he did not want to ask the trustees to amend the cheque or write a new one because he wished to avoid explaining why the amount due to him had increased. Indeed, I note that in due course the Solicitors Disciplinary Tribunal accepted the appellant's explanation that the amended figure was properly the sum due to him.
4. At some point before the end of 2002 a general allegation was made against the appellant that he had received too much money from the trust during his time as clerk. When the allegation was made against the appellant, he resigned all his charitable posts, resigned as deputy coroner for East Sussex, and resigned as a partner in Funnell & Perring in December 2002. He remained for a brief time as an employee of the firm before leaving in July 2003 to join Holden & Co as an assistant solicitor. He remained employed as an assistant solicitor by Holden & Co until he was struck off.
5. Around this time, on the advice of his solicitors, he made a without prejudice payment of £25,000 to the trust, according to the appellant, in an attempt to avoid any criminal allegations being made. In any event, the matter was referred to the police in August 2003 and the appellant was arrested in November 2003. Following a lengthy investigation, he was charged in 2005. He was indicted on 29 counts of theft, forgery, false accounting and obtaining money transfers by deception. His trial took place at Croydon Crown Court between 16th June 2006 and 13th July 2006 before His Honour Judge Stow QC and a jury. He was found guilty by the jury of one of the counts against him on 13th July 2006, that of obtaining a money transfer by deception contrary to section 15(a) of the Theft Act 1968. That charge related to the cheque which he had

altered on 15th November 2000. He was acquitted on the other charges. He was sentenced on 13th July 2006 to a conditional discharge for 12 months and ordered to pay £300 towards the prosecution costs.

6. In sentencing the appellant, Judge Stow observed that he proceeded on the basis that, so far as this count (count 5) was concerned, he had not been involved in a deception against the bank in circumstances where he did not believe that he was entitled to the extra £1,000. The judge said that he proceeded on the basis that he added the £1,000 to that cheque in circumstances where, although the appellant considered that he was entitled to it, he did not want to approach the trustees to ask for a further £1,000, or to ask them to countersign or initial any alterations to the cheque, because he would have the chore of explaining to them exactly how the amount suddenly jumped and increased by £1,000. The judge added, nevertheless, that it was plainly an offence which no solicitor should ever contemplate, let alone commit.
7. An application for leave to appeal against conviction was abandoned following a refusal of leave by the single judge. The appellant reported himself to the Law Society. His case was referred to an adjudicator from the Law Society who decided on 14th February 2006 to impose a number of immediate conditions upon the appellant's practising certificate, and to refer his case to Solicitors Disciplinary Tribunal. That tribunal heard the case on 18th December 2007. The one allegation against the appellant was that he had been convicted of a criminal offence. That was of course admitted.
8. On behalf of the appellant (the respondent at that hearing) it was submitted that he had considered that he was entitled to be paid the value of the cheque, that the judge had exceptionally imposed a very low sentence of 12 months' conditional discharge, that he had not been employed as a clerk in his capacity as a solicitor or through his firm, that Mr Salsbury had done no more than gain a payment due to him a few days earlier than would otherwise have been the case. It was said that he paid the money back to the trustees not because he had been overpaid but because he had been advised to do so.
9. It was accepted that Mr Salsbury's actions had been irregular and sloppy, but he had not dishonestly sought money to which he was not entitled. It was also said that the tribunal should take the view that the scope of the dishonesty was at such a low level that it could, in the particular circumstances of the case, take an exceptional course. Reference was also made to the personal mitigation. It was accepted that in such cases personal mitigation is of secondary importance. Nevertheless, reference was made to the very significant consequences which Mr Salsbury had suffered in his private life as a result of these events.
10. At the conclusion of the hearing, the tribunal ordered that the appellant be struck off the Roll of Solicitors. Its findings were published on 13th February 2008, and they include the following passages:

"24. The tribunal found the allegation to have been substantiated, indeed it was not contested.

"25. The tribunal considered the matters placed before it with an element of sadness. The respondent had been guilty of an act of great stupidity when he sought to increase a cheque payable to him by a figure of £1,000. The tribunal accepted the respondent's explanation that the amended figure was properly the sum due to him but he nevertheless had been convicted of a criminal offence involving dishonesty.

"26. The tribunal recognised that as a result of this act of stupidity the respondent had already suffered a great deal.

"27. The respondent had very properly admitted the allegation, and the matter with which the tribunal had to grapple was the question of the appropriate sanction to be imposed upon the respondent. The tribunal gave very careful consideration to all of the submissions made on behalf of the respondent but it had to recognise that the fortunes of an individual did not carry as much weight as the need to protect the good reputation of the solicitors' profession. The profession's collective reputation for trustworthiness was its most valuable asset and the tribunal concluded that the public's perception of the profession's absolute trustworthiness would be damaged if a solicitor convicted of a criminal offence involving dishonesty were not to be made subject to the ultimate sanction.

"28. The tribunal concluded that it was both appropriate and proportionate to order that the respondent be struck off the Roll of Solicitors."

It is against that decision which the appellant now appeals.

11. The appellant seeks an order setting aside the tribunal's order and substituting a lesser penalty. It is said that the order for striking off was excessive and disproportionate in all the circumstances of the case. The appellant relies on the sentencing remarks of Judge Stow and the leniency of the sentence, the fact that the appellant believed that he was entitled to the money, the fact that his relationship with the trustees was not one of solicitor and client, and the substantial personal mitigation of the appellant to which it is said the tribunal failed to give adequate weight.
12. On behalf of the appellant, the specific submission is made that the tribunal erred in applying the approach outlined in **Bolton v The Law Society** [1994] 1 WLR 512, without taking account of the more flexible approach indicated by Rose LJ in **Langford v The Law Society** [2002] EWHC 2802 (Admin), which takes account of the impact of the Human Rights Act 1998. It is common ground before us that the starting point is **Bolton**. At page 518 of his judgment Sir Thomas Bingham, Master of the Rolls (as he then was), stated the principles in the following terms:

"Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal. Lapses from the required high standard may, of

course, take different forms and be of varying degrees. The most serious involves proven dishonesty, whether or not leading to criminal proceedings and criminal penalties. In such cases the tribunal has almost invariably, no matter how strong the mitigation advanced for the solicitor, ordered that he be struck off the Roll of Solicitors. Only infrequently, particularly in recent years, has it been willing to order the restoration to the Roll of a solicitor against whom serious dishonesty had been established, even after a passage of years, and even where the solicitor had made every effort to re-establish himself and redeem his reputation."

13. The Master of the Rolls then explained why the tribunal makes orders which may seem harsh. He explained that such orders are not primarily punitive, rather they are intended first to ensure that the offender does not have the opportunity to repeat the offence, and secondly, the more fundamental reason in his view, to maintain the reputation of the profession "as one in which every member, of whatever standing, may be trusted to the ends of the earth." He went on to state at page 519B:

"Because orders made by the tribunal are not primarily punitive, it follows that considerations which would ordinarily weigh in mitigation of punishment have less effect on the exercise of this jurisdiction than on the ordinary run of sentences imposed in criminal cases."

He went on to conclude that the reputation of the professional is more important than the fortunes of an individual member.

14. However, since the passing of the Human Rights Act 1998, a more flexible approach has emerged. In **Ghosh v General Medical Council** [2001] 1 WLR 1915, Lord Millett, delivering the judgment of the Privy Council in an appeal from the General Medical Council, stated at paragraph 34:

"... the board will accord an appropriate measure of respect to the judgement of the committee whether the practitioner's failings amount to serious professional misconduct and on the measures necessary to maintain professional standards and provide adequate protection to the public. But the board will not defer to the committee's judgment more than is warranted by the circumstances. The Council conceded, and their Lordships accept, that it is open to them to consider all the matters raised by Dr Ghosh in her appeal; to decide whether the sanction of erasure was appropriate and necessary in the public interest or was excessive and disproportionate; and in the latter event either to substitute some other penalty or to remit the case to the committee for reconsideration."

There is a passage to similar effect in the judgment of the Privy Council delivered by Lord Cooke in **Preiss v General Dental Council** [2001] 1 WLR 1926 at paragraph 27. In **Langford v The Law Society**, to which I have already referred, Rose LJ observed:

"As to the approach, in general, which this court should adopt, it is not contested to the contrary by Mr Williams, on behalf of the Law Society,

that Mr Foster's submission, based in particular on **Ghosh v General Medical Council...** and **MacMahon v Council of the Law Society of Scotland...**, is appropriate. That is to say, in dealing with an appeal of this kind, a greater flexibility is now appropriate than was suggested in **Bolton** which was decided before the coming into force of the Human Rights Act."

15. Against this background, it is said on behalf of the appellant that the tribunal fell into error by regarding the fact of conviction for an offence of dishonesty as automatically leading to a penalty of striking off, regardless of individual circumstances. Here the appellant relies in particular on the following sentence in the decision:

"The profession's collective reputation for trustworthiness was its most valuable asset and the tribunal concluded that the public's perception of the profession's absolute trustworthiness would be damaged if a solicitor convicted of a criminal offence involving dishonesty were not to be made subject to the ultimate sanction."

Mr Broatch, who appears on behalf of the appellant, submits that this is an application of the **Bolton** approach and not the flexible individual approach which should now be applied after the enactment of the Human Rights Act. He submits that the tribunal asked itself the wrong question. It asked, "Would the public expect a solicitor convicted of any offence of dishonesty to be struck off?", whereas he submits they should have asked, "Would the public expect this solicitor, who has committed this form of dishonesty, to be struck off?" I should make it clear that I do not accept that the expectation of the public, which is the essence of both formulations put forward by Mr Broatch, is the sole or necessarily the governing consideration. However, addressing his submission, I am unable to accept that the tribunal failed to take account of the unusual circumstances in the case of Mr Salsbury. The sentence on which Mr Broatch relies has to be considered in context. When considered in the light of paragraphs 24-28 of the findings, which I have already set out, it is clear that the tribunal did have particular regard to all the individual circumstances of this case and of this appellant. Paragraph 25 puts at the forefront of the analysis the particular circumstances of this breach and the tribunal's acceptance that the amended figure on the cheque was properly due to him.

16. To my mind the passage on which Mr Broatch relies simply makes the further point that the reputation of the profession for trustworthiness is also a relevant consideration which must be taken into account. That is undoubtedly correct. The tribunal was right to take account of the fact that in general the public perception of the profession would be damaged if a solicitor convicted of a criminal offence of dishonesty was not struck off. Moreover, it is clear that the tribunal did give anxious consideration to the individual circumstances of this appellant. That is apparent from its reference in paragraph 27 of its findings to the fact that it had to grapple with the question of the appropriate sanction to impose, and the fact that we are told that it was in retirement for a considerable time. This was not, in my view, a case of a finding of dishonesty leading automatically to striking off without any consideration of the individual

circumstances. Accordingly, I am unable to see on what basis it can be said that the tribunal approached the question on the wrong basis.

17. However, that is not the end of the matter because in hearing this case we are exercising an appellate jurisdiction, not a supervisory jurisdiction. It is therefore appropriate to consider whether in all the particular circumstances of this case the order was excessive or disproportionately harsh. I have come to the conclusion that it is.
18. I accept that Mr Salsbury was not acting as a solicitor in the course of his dealing with the trustees. However, this seems to me to make little difference. As a member of the profession, Mr Salsbury was required to maintain the highest standards of probity in all his dealings.
19. I also accept that Judge Stow dealt very leniently with the appellant. However, he made clear that he felt he could take that exceptional course because of the consequences which he considered would inevitably fall on the appellant by reason of his conviction. While Judge Stow was, in my judgment, entirely justified in taking that course, it cannot assist the appellant here.
20. The general sloppiness which forms the background to the arrangement between the appellant and the trustees cannot, to my mind, provide any justification or excuse for what he did. On the contrary, it was the responsibility of Mr Salsbury as a professional man to conduct the affairs of the trust properly.
21. However, to my mind, there is force in the submissions made by Mr Broatch on behalf of the appellant in relation to the precise nature of what occurred in this case. I emphasise that this was an offence of a very unusual nature. It is an offence of dishonesty. The dishonesty, however, lies in that, by deception, this appellant caused the paying bank to believe that the cheque which he tendered was a good and proper order for the payment of £1,862.50 when it was not. The alteration was made and the cheque tendered in circumstances where, as the judge accepted, the appellant believed that the altered sum on the cheque was due and owing to him. Moreover, as the tribunal accepted, that altered sum was in fact due and owing to him. These wholly exceptional facts seem to me to bring this case right to the very bottom of the scale of dishonesty.
22. Altering this cheque was, of course, a very wrong thing to do. Nevertheless, having regard to the approach which this court now adopts, as formulated in **Langford** and the other authorities to which I have referred, it does seem to me that there must be a small residual category of cases of dishonesty where striking off may not be appropriate. After giving this matter anxious consideration, I have come to the view that this case falls within that very small residual category. I am fortified in that conclusion when I have regard to the personal mitigation which applies in this case. I appreciate that this is not a weighty factor in cases of this kind for the reasons given by the Master of the Rolls in **Bolton**. Nevertheless, I do bear in mind that while the professional consequences in any case of this sort will inevitably be catastrophic, the personal consequences in the private life of this appellant have been particularly grave.

23. Having regard to all of these considerations, I have come to the conclusion that the order made by the tribunal was excessive and disproportionately harsh, and for my part I would propose to set aside that order and to substitute an order for 3 years' suspension.
24. LORD JUSTICE DYSON: I agree.
- 25.
26. MR BROATCH: Would your Lordships order that the suspension begin on 18th December, which was the day when his striking off began?
27. MR MARRIOTT: That would seem right, my Lord.
28. LORD JUSTICE DYSON: Very well, we will do that.
29. MR BROATCH: My Lord, the appellant asks for an order for costs. I have had an opportunity of discussing costs with my learned friend in either event of what happened. The appellant's costs are in the sum of £5483.75. I would ask for an order in that sum.
30. MR MARRIOTT: I do not think I can resist that, my Lord. I agree in principle.
31. LORD JUSTICE DYSON: Do you say anything about the sum?
32. MR MARRIOTT: No, I agree the amount.
33. LORD JUSTICE DYSON: Oh, you agree the amount. So you do not oppose the application?
34. MR MARRIOTT: I cannot resist the application, my Lord. I just have one application to make and that would be for permission to appeal to the Court of Appeal. The reasons for that are that the Law Society take the view that the punishment, the penalty imposed by the tribunal, was not disproportionate, not excessive in view of the extent of the criminality and the conviction, and I would ask for permission to appeal from this court.
35. LORD JUSTICE DYSON: No, I think you will have to ask the Court of Appeal for that.
36. MR MARRIOTT: I thought I might.
37. LORD JUSTICE DYSON: Thank you both very much.